THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.6005 OF 2006

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Dated: 24-03-2006

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Between

K. Varun,

S/o. Late Sri K. Anil Kumar,

R/o. Plot No.153/A,

MLA's Colony,

Road No.12,

Banjara Hills,

Hyderabad

and another.

...PETITIONERS

AND

Municipal Corporation of Hyderabad,

Tank Bund Road, Hyderabad,

Rep. by its Commissioner.

...RESPONDENT

ORDER:

Petitioners seek a Writ of Mandamus to declare the impugned Notice in Proceedings No.4/ACP 03/W1/C/06 dated 24.03.2006 issued by the respondent in respect of their property bearing office premises No.1-7-143 and 143/A in Stilt floor admeasuring 1526 sq.

feet in Kancharla Towers, Golconda X Roads, Hyderabad as illegal and arbitrary.

Heard the learned counsel appearing for the petitioners as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioners submits that the petitioners are the owners of the office premises bearing No.1-7-143 and 143/A in Stilt floor admeasuring 1526 sq. feet and the said premises was purchased by their late mother. Subsequently in terms of the Development Agreement, M/s Manisha Constructions constructed the multi-storied complex as per the sanctioned plan in Permit No.389/74 in File No.293/DP3/92 dated 03.10.1992 with ground plus upper four floors and pent house. In fact, the respondent corporation has regularized the construction of shops in the stilt portion by collecting an amount of Rs.58,880/- as penal amount along with permit fee of Rs.9,617 vide proceedings in File No.1122/BRS/HO/98 and Building Regularization No.73/03/2000 dated 10.02.200 and since then the petitioners have been in possession of the said shops by paying taxes regularly and there is no complaint whatsoever.

While so, the respondent without issuing any show cause notice, issued a notice in Proceedings No.4/ACP 03/W1/C/06 dated
24.03.2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioners have made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioners were directed to remove the said unauthorized structures within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after

obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioners to remove the structures.

Having regard to the facts and circumstances of the case,
the impugned notice dated 24-03-2006 in Proceedings
No.4/ACP 03/W1/C/06 is directed to be treated as a show cause notice only permitting the petitioners to file an explanation/representation within one week from the date of receipt of a copy of this order and on such an explanation being filed and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioners, the respondents shall not remove or demolish the premises of the petitioners.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

March 24, 2006

DSK